



PROPERTY CODE

TITLE 12. MISCELLANEOUS SHARED REAL PROPERTY INTERESTS

CHAPTER 221. TEXAS TIMESHARE ACT

As Revised and in Effect on

September 1, 2009

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Table of Contents

SUBCHAPTER A. GENERAL PROVISIONS	1
Sec. 221.001. SHORT TITLE.	1
Sec. 221.002. DEFINITIONS.....	1
Sec. 221.003. APPLICABILITY	3
 SUBCHAPTER B. CREATION OF TIMESHARE REGIME	3
Sec. 221.011. DECLARATION	3
Sec. 221.012. CONVEYANCE AND ENCUMBRANCE	4
Sec. 221.013. COMMON OWNERSHIP	4
 SUBCHAPTER C. REGISTRATION	4
Sec.221.021. REGISTRATION REQUIRED.....	4
Sec. 221.022. APPLICATION FOR REGISTRATION	5
Sec. 221.023. AMENDMENT OF REGISTRATION	6
Sec. 221.024. POWERS OF COMMISSION	6
Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS: EXEMPTION FROM CERTAIN LAWS	7
Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION	7
Sec. 221.027. TEMPORARY SUSPENSION	8
 SUBCHAPTER D. DISCLOSURE.....	8
Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS	8
Sec. 221.032. TIMESHARE DISCLOSURE STATEMENT	9
Sec. 221.033. EXCHANGE DISCLOSURE STATEMENT	13
Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS	14
Sec. 221.035. SUPERVISORY DUTIES OF DEVELOPER	15
Sec. 221.036. DEVELOPER PREPARATION AND COMPLETION OF DOCUMENTS.....	15
Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME	15
 SUBCHAPTER E. CANCELLATION OF PURCHASE CONTRACT	16
Sec. 221.041. PURCHASER'S RIGHT TO CANCEL	16
Sec. 221.042. NOTICE; REFUND	16
Sec. 221.043. CONTRACT REQUIREMENTS	16
 SUBCHAPTER F. EXCHANGE PROGRAM	17
Sec.221.051. OPERATION REQUIREMENT.....	17
Sec. 221.052. LIABILITY OF DEVELOPER AND EXCHANGE COMPANY	17
Sec. 221.053. EXCHANGE COMPANY LIABILITY	18

SUBCHAPTER G. ESCROW DEPOSITS	18
Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED.....	18
Sec. 221.062. RELEASE OF ESCROW	18
Sec. 221.063. ALTERNATIVE TO ESCROW OR TRUST ACCOUNT: FINANCIAL ASSURANCE	19
Sec. 221.064. DOCUMENTATION REQUIRED	20
 SUBCHAPTER H. MISCELLANEOUS PROVISIONS.....	20
Sec. 221.071. DECEPTIVE TRADE PRACTICES	20
Sec. 221.072. INSURANCE	21
Sec. 221.073. PENALTY	21
Sec. 221.074. ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT	21
Sec. 221.075. CIVIL PENALTY FOR LATE STATEMENT; INJUNCTION	22
Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIMESHARE PROPERTY	22
Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS RETENTION	23

PROPERTY CODE

TITLE 12. MISCELLANEOUS SHARED REAL PROPERTY INTERESTS CHAPTER 221. TEXAS TIMESHARE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. **SHORT TITLE.** This chapter shall be known and may be cited as the Texas Timeshare Act.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.001 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

Sec. 221.002. **DEFINITIONS.** As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals; and

(C) is part of a timeshare plan.

(2) "Advertisement" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by electronic media or telephone; or

(C) solicited through direct mail.

(3) "Amenities" means all common areas and includes recreational and maintenance facilities of the timeshare plan.

(4) "Assessment" means an amount assessed against or collected from a purchaser by an association or its managing entity in a fiscal year, regardless of the frequency with which the amount is assessed or collected, to cover expenditures, charges, reserves, or liabilities related to the operation of a timeshare plan or timeshare properties managed by the same managing entity.

(5) "Association" means a council or

association composed of all persons who have purchased a timeshare interest.

(6) "Commission" means the Texas Real Estate Commission.

(7) "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.

(8) "Developer" means:

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

(i) offers at least 12 timeshare interests in a particular timeshare plan; and

(ii) is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests.

(9) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest but does not include the transfer or release of a real estate lien or of a security interest.

(10) "Escrow agent" means a bonded escrow company, a financial institution whose accounts are insured by a governmental agency or instrumentality, or an attorney or title insurance agent licensed in this state who is responsible for the receipt and disbursement of funds in accordance with this chapter.

(11) "Exchange company" means any person who owns or operates an exchange program.

(12) "Exchange disclosure statement" means a written statement that includes the information required by Section 221.033.

(13) "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of timeshare interests among purchasers or owners.

(14) "Incidental use right" means the right to use accommodations and amenities at one or

more timeshare properties that is not guaranteed and is administered by the managing entity of the timeshare properties that makes vacant accommodations at the timeshare properties available to owners of timeshare interests in the timeshare properties.

(15) "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(16) "Multisite timeshare plan" means a plan in which a timeshare purchaser has:

(A) a specific timeshare interest, which is the right to use and occupy accommodations at a specific timeshare property and the right to use and occupy accommodations at one or more other component sites created by or acquired solely through the reservation system of the timeshare plan; or

(B) a nonspecific timeshare interest, which is the right to use and occupy accommodations at more than one component site created by or acquired solely through the reservation system of the timeshare plan but which does not include a right to use and occupy a particular accommodation.

(17) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(18) "Project instrument" means a timeshare instrument or one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a declaration for a condominium, association articles of incorporation, association bylaws, and rules for a condominium in which a timeshare plan is created.

(19) "Promotion" means any program, activity, contest, or gift, prize, or other item of value used to induce any person to attend a timeshare sales presentation.

(20) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser,

in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

(22) "Single-site timeshare plan" means a timeshare plan in which a timeshare purchaser's right to use and occupy accommodations is limited to a single timeshare property. A single-site timeshare plan that includes an incidental use right or a program under which the owner of a timeshare interest at a specific timeshare property may exchange a timeshare period for another timeshare period at the same or another timeshare property under common management does not transform the single-site timeshare plan into a multisite timeshare plan.

(23) "Timeshare disclosure statement" means a written statement that includes the information required by Section 221.032.

(24) "Timeshare estate" means an arrangement under which the purchaser receives a right to occupy a timeshare property and an estate interest in the real property.

(25) "Timeshare interest" means a timeshare estate or timeshare use.

(26) "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare plan.

(27) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of an accommodation.

(28) "Timeshare plan" means any arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, by which a purchaser,

in exchange for consideration, receives an ownership right in or the right to use accommodations for a period of time less than a year during a given year, but not necessarily consecutive years.

(29) "Timeshare property" means:

(A) one or more accommodations and any related amenities subject to the same timeshare instrument; and

(B) any other property or property rights appurtenant to the accommodations and amenities.

(30) "Timeshare use" means any arrangement under which the purchaser receives a right to occupy a timeshare property, but under which the purchaser does not receive an estate interest in the timeshare property.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.002 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 1, eff. Sept. 1, 1993.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 1, eff. January 15, 2006.*

Sec. 221.003. **APPLICABILITY.** (a) This chapter applies to all timeshare properties that are located in this state or offered for sale in this state.

(b) Timeshare properties located outside this state are subject only to Subchapters C through H.

(c) This chapter applies to any timeshare property in existence on or after August 26, 1985, but does not affect a timeshare contract in existence before that date.

(d) A timeshare property subject to this chapter is not subject to Chapter 209 unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

(e) If a person with a specific program that might otherwise be subject to this chapter received from the commission, before January 31, 2005, a written determination that the program is exempt from this chapter as the chapter existed when the determination was made, the program remains exempt from this chapter if:

(1) the program does not vary materially from the terms on which the exemption was granted; or

(2) the program varies materially from the terms on which the exemption was granted, but the person receives from the commission a new written determination that the program is exempt from this chapter.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.003 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 2, eff. January 15, 2006.*

SUBCHAPTER B. CREATION OF TIMESHARE REGIME

Sec. 221.011. **DECLARATION.** (a) The developer of a timeshare plan any part of which is located in this state must record the timeshare instrument in this state. When a person expressly declares an intent to subject the property to a timeshare plan through the recordation of a timeshare instrument that sets forth the information provided in Subsections (b) and (c), that property shall be established thenceforth as a timeshare plan.

(b) The declaration made in a timeshare instrument recorded under this section must include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building included in the timeshare plan;

(2) a description of each existing or proposed accommodation, including the location and square footage of each unit and an interior floor plan of each existing or proposed building;

(3) a description of any amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part that each timeshare interest bears to the entire timeshare plan;

(5) if applicable, a statement that the timeshare property is part of a multisite timeshare plan; and

(6) any additional provisions that are consistent with this section.

(c) Any timeshare interest created under this section is subject to Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts of an exchange company in exchanging timeshare periods.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.011 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.809, eff. Sept. 1, 2003.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 3, eff.
January 15, 2006.*

Sec. 221.012. CONVEYANCE AND ENCUMBRANCE. Once the property is established as a timeshare plan, each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.012 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 3, eff.
January 15, 2006.*

Sec.221.013.COMMON OWNERSHIP. (a) Any timeshare interest may be jointly or commonly owned by more than one person.

(b) A timeshare estate may be jointly or commonly owned in the same manner as any other real property interest in this state.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.013 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b) eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 3, eff.
January 15, 2006.*

Sec. 221.014. PARTITION. An action for partition of a timeshare interest may not be maintained during the term of a timeshare plan.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.014 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 3, eff.
January 15, 2006.*

SUBCHAPTER C. REGISTRATION

Sec.221.021. REGISTRATION REQUIRED.

(a) Except as provided by Subsection (b) or (d) of this section or another provision of this chapter, a person may not offer or dispose of a timeshare interest unless the timeshare plan is registered with the commission.

(b) Before a registration application for a timeshare plan is submitted or completed, a developer or any person acting on the developer's behalf may accept a reservation and a deposit from a prospective purchaser if the deposit is placed in a segregated escrow account with an independent escrow agent and if the deposit is fully refundable at any time at the request of the purchaser. The deposit may not be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument.

(c) A developer or any person acting on the developer's behalf may not offer or dispose of a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the period the application is in process. To obtain a presales authorization, the developer must:

(1) submit a written request to the commission for an authorization to conduct presales;

(2) submit an administratively complete application for registration, including appropriate fees and exhibits required by the commission; and

(3) provide evidence acceptable to the commission that all funds received by the developer will be placed with an escrow agent with instructions requiring the funds to be retained until a registration application is complete as determined by the commission.

(e) During the presales authorization period, the developer must:

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

(2) offer each purchaser the opportunity to cancel the purchase contract as provided by Section 221.041.

(f) After the final timeshare disclosure statement is approved by the commission, the developer must:

(1) give each purchaser and prospective purchaser a copy of the final timeshare disclosure statement; and

(2) if the commission determines that a materially adverse change exists between the disclosures contained in the proposed timeshare disclosure statement and the final timeshare disclosure statement, provide the purchaser a second opportunity to cancel the purchase contract as provided by Section 221.041.

(g) The requirements of this subchapter remain in effect during the period the developer offers or disposes of timeshare interests of the timeshare plan registered with the commission. The developer must notify the commission in writing when all of the timeshare interests of a timeshare plan have been disposed of.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.021 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff.
January 15, 2006.*

Sec. 221.022. APPLICATION FOR REGISTRATION. (a) An application for registration filed under this section must include a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

(b) If existing or proposed accommodations are in a condominium or similar development, the application for registration must contain the project instruments of that development and affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by those instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application must contain evidence that existing owners of the condominium development were provided written notice, at least 60 days before the application for registration, that timeshare interests would be created and sold. If the project instruments prohibit the creation or disposition of timeshare interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit that creation and disposition.

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan for any accommodations in the plan located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless:

(1) the developer is a:

(A) successor in interest after a merger or acquisition; or

(B) joint venture in which the previous developer or its affiliate is a partner or a member; and

(2) the previous developer registered the timeshare plan in this state preceding the merger, acquisition, or joint venture.

(e) A developer filing an abbreviated application must provide:

(1) the legal name and any assumed names and the principal office location, mailing address, telephone number, and primary contact person of the developer;

(2) the name, location, mailing address, telephone number, and primary contact person of the timeshare plan;

(3) the name and address of the developer's authorized or registered agent for service of process in this state;

(4) the name, primary office location, mailing address, and telephone number of the managing entity of the timeshare plan;

(5) the certificate or other evidence of registration from any jurisdiction in which the timeshare plan is approved or accepted;

(6) the certificate or other evidence of registration from the appropriate regulatory agency of any other jurisdiction in the United States in which some or all of the accommodations are located;

(7) a declaration stating whether the timeshare plan is a single-site timeshare plan or a multisite timeshare plan;

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

(9) a disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan and whether the timeshare plan, the developer, or the managing entity used were denied registration or, during the five-year period before the registration application date, were the subject of a final adverse disposition in a disciplinary proceeding;

(10) if requested by the commission, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the timeshare plan;

(11) the appropriate filing fee; and

(12) any other information reasonably requested by the commission or required by commission rule.

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

(g) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover those expenses.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.022 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff.
January 15, 2006.
SB 1036, 81st Leg. R.S., eff. Sept. 1, 2009.*

Sec. 221.023. AMENDMENT OF REGISTRATION. The developer shall file amendments to the registration reporting to the commission any materially adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.023 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff.
January 15, 2006.*

Sec. 221.024. POWERS OF COMMISSION. (a) The commission may prescribe and publish forms and adopt rules

necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than \$10,000, or take any other disciplinary action authorized by this chapter if, after notice and hearing, the commission determines that a developer has materially violated this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 621, Business & Commerce Code).

(b) The commission:

(1) shall authorize the State Office of Administrative Hearings to conduct hearings in contested cases; and

(2) may establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this chapter.

(c) If the commission initiates a disciplinary proceeding under this chapter, the person is entitled to a hearing before the State Office of Administrative Hearings. The commission by rule shall adopt procedures to permit an appeal to the commission from a determination made by the State Office of Administrative Hearings in a disciplinary action.

(d) The commission shall set the time and place of the hearing.

(e) A disciplinary procedure under this chapter is governed by the contested case procedures of Chapter 2001, Government Code.

(f) The commission may file a suit in a district court of Travis County to prevent a violation of this chapter or for any other appropriate relief.

(g) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) by trial de novo.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.024 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 1, eff. June 14, 1989;

Acts 1999, 76th Leg., ch. 62, Sec. 7.87, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff. January 15, 2006.

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 2.34, eff. April 1, 2009.

SB 862, 81st Leg. R.S., eff. Sept. 1, 2009.

Sec. 221.025. EFFECT OF REGISTRATION ON OTHER LAWS: EXEMPTION FROM CERTAIN LAWS. (a) A developer's compliance with this chapter exempts the developer's offer and disposition of timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership.

(c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of Section 82.0675 relating to club membership.

(d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.025 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff. January 15, 2006.

Sec. 221.026. ISSUANCE AND RENEWAL OF REGISTRATION. (a) The commission by rule shall adopt requirements for the issuance and renewal of a developer's registration under this chapter, including:

(1) the form required for application for registration or a renewal of registration; and

(2) any supporting documentation required for registration or renewal of registration.

(b) The commission shall issue or renew a registration under this chapter for a period not to exceed 24 months.

(c) The commission may assess and collect a fee for the issuance or renewal of a registration under this chapter.

(d) The commission may assess and collect a late fee if the commission has not received the fee or any supporting documentation required before the 61st day after the date a registration is issued or renewed under this section.

(e) Failure to pay a renewal fee or late fee is a violation of this chapter.

Added by Acts 2005, 79th Leg., Ch. 539, Sec. 4, eff. January 15, 2006.

Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether the registration for a timeshare plan under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a timeshare plan registered under this chapter would, by the continued disposition of the timeshare property, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the registration of the timeshare plan.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

*Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 58, eff. September 1, 2007.
SB 862, 81st Leg. R.S., eff. Sept. 1, 2009.*

SUBCHAPTER D. DISCLOSURE

Sec. 221.031. ADVERTISEMENTS AND PROMOTIONS. (a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 621, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 621, Business & Commerce Code.

(c) As provided by Subsections (d) and (e), an advertisement that contains a promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 621, Business & Commerce Code, the following:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer.

(d) An advertisement containing the disclosures required by Chapter 621, Business & Commerce Code, and Subsection (c) must be provided in writing or electronically:

(1) at least once before a scheduled sales presentation; and

(2) in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend the sales presentation.

(e) The developer is not required to provide the disclosures required by this section in every advertisement or other written, oral, or electronic communication provided or made to a recipient before a scheduled sales presentation.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.031 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 2, eff. June 14, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 5, eff. January 15, 2006.

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 2.35, eff. April 1, 2009.

Sec. 221.032. **TIMESHARE DISCLOSURE STATEMENT.** (a) Before the signing of any agreement to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement.

(b) The timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan;

(2) a description of the duration and operation of the timeshare plan;

(3) a description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations expressed in periods of seven-day use availability or other time increment applicable to the

timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(4) a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities;

(5) the extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built;

(6) a description of the method and timing for performing maintenance of the accommodations;

(7) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(8) a description of the method by which purchasers' use of the accommodations is scheduled;

(9) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) relating to the single-site timeshare plan or the specific timeshare interest of a multisite timeshare plan, copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(11) the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(12) the current annual budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account. The budget must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the timeshare plan or timeshare properties managed by the same managing entity;

(C) the assumptions on which the operating budget is based;

(13) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers;

(14) any initial fee or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(15) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(16) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suit, adjudication, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(17) a description of any financing offered by or available through the developer;

(18) any current or anticipated fees or charges to be paid by timeshare purchasers for the use of any accommodations or amenities related to the timeshare plan, and a statement that the fees or charges are subject to change;

(19) a description and amount of insurance

coverage provided for the protection of the purchaser;

(20) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(21) a description of those matters required by Section 221.041;

(22) a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(23) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(24) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(25) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(26) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(c) A developer who offers a specific timeshare interest in a multisite timeshare plan also must fully disclose the following information in written, graphic, or tabular form:

(1) a description of each component site, including the name and address of each component site;

(2) a description of each type of accommodation in each component site, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(3) a description of the amenities at each component site available for use by the purchasers;

(4) a description of the reservation system, which must include:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(5) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(6) a description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(7) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(8) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan; and

(9) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(d) A developer who offers a nonspecific timeshare interest in a multisite timeshare plan must disclose the following information in written, graphic, or tabular form:

(1) the name and address of the developer;

(2) a description of the type of interest and the usage rights the purchaser will receive;

(3) a description of the duration and operation of the timeshare plan;

(4) a description of the type of insurance coverage provided for each component site;

(5) an explanation of who holds title to the accommodations of each component site;

(6) a description of each component site, including the name and address of each component site;

(7) a description of the existing or proposed accommodations, expressed in periods of seven-day use availability or any other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(8) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) if applicable, copies of the following documents applicable to the multisite timeshare plan, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(10) a description of the method and timing for performing maintenance of the accommodations;

(11) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(12) a description of each type of accommodation included in the timeshare plan, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(13) a description of amenities available for use by the purchaser at each component site;

(14) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan;

(15) a description of the right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(16) a description of the reservation system that shall include all of the following:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for

operation of the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(17) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between the multisite timeshare plan managing entity and the managing entity of the component sites of the multisite timeshare plan, if different from the multisite timeshare plan managing entity;

(18) the current annual budget of the multisite timeshare plan, if available, or the projected annual budget for the multisite timeshare plan, which must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the multisite timeshare plan;

(C) the assumptions on which the operating budget is based;

(19) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers of the multisite timeshare plan;

(20) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(21) any current fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan and a statement that the fees or charges are subject to change;

(22) any initial or special fee due from the purchaser at closing, together with a description of the purpose of and method of calculating the fee;

(23) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(24) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(25) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(26) a description of those matters required by Section 221.041;

(27) a description of any financing offered by or available through the developer;

(28) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suits, adjudications, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(29) a statement disclosing any right of first refusal or other restraint on the transfer of all or a portion of a timeshare interest;

(30) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(31) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(32) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(e) A developer may include any other information in a timeshare disclosure statement required by this section on approval by the commission.

(f) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.032 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 3, eff. Sept. 1, 1993.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 5, eff.
January 15, 2006.
SB 1036, 81st Leg. R.S., eff. Sept. 1, 2009.*

Sec. 221.033. EXCHANGE DISCLOSURE STATEMENT. (a) Before the signing of any agreement to purchase a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition.

(b) If participation in an exchange program is offered for the first time after a disposition has occurred, any person offering that participation shall also deliver an exchange disclosure statement to the purchaser before the execution by the purchaser of any instrument relating to participation in the exchange program.

(c) In all cases, the person offering participation in the exchange program shall obtain from the purchaser a written acknowledgement of receipt of the exchange disclosure statement.

(d) The exchange disclosure statement must include the following information:

(1) the name and address of the exchange company;

(2) if the exchange company is not the developer, a statement describing the legal relationship, if any, between the exchange company and the developer;

(3) a statement indicating the conditions under which the exchange program might terminate or become unavailable;

(4) whether membership or participation or both in the exchange program is voluntary or mandatory;

(5) a complete description of the required procedure for executing an exchange of timeshare periods;

(6) the fee required for membership or participation or both in the program and whether the fee is subject to change;

(7) a statement to the effect that participation in the exchange program is conditioned on compliance with the terms of a contract between the exchange company and the purchaser;

(8) a statement in conspicuous and bold-faced print to the effect that all exchanges are arranged on a space-available basis and that neither the developer nor the exchange company guarantees that a particular timeshare period can be exchanged; and

(9) a description of seasonal demand and unit occupancy restrictions employed in the exchange program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.033 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 6, eff.
January 15, 2006.*

Sec. 221.034. EXEMPT OFFERINGS AND DISPOSITIONS; COMMUNICATIONS. (a) An offering or disposition is exempt from this chapter if it is:

(1) a gratuitous offering or disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) an offering or disposition by an association of its own timeshare interest acquired through foreclosure, deed in lieu of foreclosure, or gratuitous transfer;

(6) an offering or disposition of all timeshare interests in a timeshare plan to not more than five persons;

(7) an offering or disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) an offering or disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(9) the offering or redispotion of a timeshare interest by a purchaser who acquired the interest for the purchaser's personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

(b) If a developer has a timeshare plan registered under this chapter and is subject to Section 221.024, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this chapter to a person who is the owner of a timeshare interest in a timeshare plan created by the developer. A developer under this subsection is exempt from Sections 221.021, 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061, 221.071 (a)(1) and (8), 221.074, and 221.075 if the developer:

(1) permits the purchaser to cancel the purchase contract before the sixth day after the date the contract is signed; and

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in which the timeshare property is located.

(c) The following communications are not advertisements under this chapter:

(1) any stockholder communication, including an annual report or interim financial report, proxy material, registration statement,

securities prospectus, timeshare disclosure statement, or other material required to be delivered to a prospective purchaser by a state or federal governmental entity;

(2) any oral or written statement disseminated by a developer to broadcast or print media, excluding:

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

(B) the rebroadcast or other dissemination of any oral statements by a developer to a prospective purchaser or the distribution or other dissemination of written statements, including newspaper or magazine articles or press releases, by a developer to prospective purchasers;

(3) the offering of a timeshare interest in a national publication or by electronic media that is not directed to or targeted at any individual located in this state;

(4) any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental if:

(A) a sales presentation is not a term or condition of the availability of the accommodations; and

(B) the failure of the transient renter to take a tour of the timeshare property or attend a sales presentation does not result in a reduction in the level of services or an increase in the rental price that would otherwise be available to the renter; or

(5) any follow-up communication with a person relating to a promotion if the person previously received an advertisement relating to the promotion that complied with Section 221.031.

(d) The following communications are exempt from this chapter if they are delivered to a person who has previously executed a contract for the purchase of or is an owner of a timeshare interest in a timeshare plan:

(1) any communication addressed to and relating to the account of the person; or

(2) any audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that exchange company or program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.034 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 7, eff. January 15, 2006.*

Sec. 221.035. SUPERVISORY DUTIES OF DEVELOPER. Notwithstanding obligations placed upon any other persons by this chapter, the developer shall supervise, manage, and control all aspects of the offering of a timeshare interest, including but not limited to promotion, advertising, contracting, and closing. Any violation of this chapter which occurs during such offering activities is considered to be a violation by the developer as well as by the person actually committing the violation.

Added by Acts 1989, 71st Leg., ch. 381, Sec. 3, eff. June 14, 1989.

Sec. 221.036. DEVELOPER PREPARATION AND COMPLETION OF DOCUMENTS. (a) A developer may charge a reasonable fee for completion of a contract form, closing document, or disclosure document required for the sale, exchange, option, lease, or rental of a timeshare interest.

(b) The action of a developer under Subsection (a) does not constitute the unauthorized or illegal practice of law in this state if the contract or document has been:

(1) accepted by the commission for use in the particular type of transaction involved; or

(2) prepared by an attorney licensed to practice law in this state for use in the particular type of transaction involved.

Added by Acts 2003, 78th Leg., ch. 1244, Sec. 1, eff. June 20, 2003.

Sec. 221.037. ALTERNATIVE TERMINOLOGY OR NAME. (a) In providing the disclosures required by this chapter, the use of the terms "vacation ownership interest" or "vacation ownership plan" to refer to the timeshare interest or plan offered by the developer, or the use of other terms that are substantially similar and that are regularly used

by the developer to denote a timeshare interest or plan, is sufficient and complies with the requirements of this chapter.

(b) In providing the full name of a developer or a marketing company as required by this chapter, the disclosure of an assumed name of the developer or the marketing company, if the entity has complied with the requirements of the applicable assumed business is sufficient and complies with this chapter.

Added by SB 1036, 81st Leg. R.S., eff. Sept. 1, 2009.

SUBCHAPTER E. CANCELLATION OF PURCHASE CONTRACT

Sec. 221.041. PURCHASER'S RIGHT TO CANCEL. (a) A purchaser may cancel a purchase contract before the sixth day after the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later.

(b) A purchaser may not waive the right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.041 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 4, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 443, Sec. 4, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 8, eff. January 15, 2006.

Sec. 221.042. NOTICE; REFUND. (a) If a purchaser elects to cancel a purchase contract under Section 221.041, the purchaser may do so by hand-delivering notice of cancellation to the developer, by mailing notice by prepaid United States mail to the developer or to the developer's agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all

payments made by the purchaser before cancellation must be refunded on or before the 30th day after the date on which the developer receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.042 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 8, eff. January 15, 2006.

Sec. 221.043. CONTRACT REQUIREMENTS. (a) Each purchase contract shall contain the following information. The statements required by this subsection and Subsection (c)(8) shall be provided in a conspicuous manner and in the exact language set forth in this section with the developer's name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:

"PURCHASER'S RIGHT TO CANCEL.

"(1) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER.

"(2) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT

NAME OF DEVELOPER) AT (INSERT ADDRESS OF DEVELOPER). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY OVERNIGHT COMMON CARRIER.

"(3) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

(b) Immediately following the required statements in Subsection (a) shall be a space reserved for the signature of the purchaser.

(c) The purchase contract must also include the following:

(1) the name and address of the developer and the address of the timeshare property or the address of any available timeshare interest being offered;

(2) an agreement describing the cancellation policy prescribed by Section 221.041;

(3) the name of the person or persons primarily involved in the sales presentation on behalf of the developer;

(4) a statement disclosing the amount of the periodic assessments currently assessed against or collected from the purchasers of the timeshare interest, immediately followed by a statement providing that collected assessments will be used by the managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) the date the purchaser signs the contract; and

(6) the following statement:

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL

YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

(d) The information required to be provided by this section may be provided in the purchase contract or in an exhibit to the purchase contract, or it may be provided in part in both if all of the information is provided.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.043 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 381, Sec. 5, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 443, Sec. 5, eff. Sept. 1, 1993.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 8, eff.
January 15, 2006.
SB 1036, 81st Leg. R.S., eff. Sept. 1, 2009.*

SUBCHAPTER F. EXCHANGE PROGRAM

Sec. 221.051. OPERATION REQUIREMENT. An exchange company shall employ seasonal demand and unit occupancy restrictions in the operation of its exchange program.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.051 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Sec. 221.052. LIABILITY OF DEVELOPER AND EXCHANGE COMPANY. (a) A developer does not incur any liability arising out of the use, delivery, or publication to a purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless the developer knows or has reason to know that the materials are inaccurate or false.

(b) No exchange company shall have any liability with respect to any violation under this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the

exchange company.

(c) An exchange company that denies exchange privileges to an owner whose use of accommodations in the owner's timeshare plan is denied is not liable to any member of the exchange company or exchange program or any third party because of the denial of the owner's exchange privileges.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.052 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 9, eff. January 15, 2006.*

Sec. 221.053. EXCHANGE COMPANY LIABILITY. Except for written information or audio-visual materials provided to a developer by an exchange company, an exchange company does not incur liability as a result of:

(1) a representation made by a developer that relates to any exchange program or exchange company; or

(2) the use, delivery, or publication by a developer of information that relates to an exchange program or exchange company.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.053 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

SUBCHAPTER G. ESCROW DEPOSITS

Sec. 221.061. ESCROW OR TRUST ACCOUNT REQUIRED. (a) A developer or escrow agent of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository 100 percent of all funds received during the purchaser's cancellation period.

(b) An escrow agent owes the purchaser a fiduciary duty.

(c) The escrow agent and the developer shall execute an agreement that includes a statement providing that:

(1) funds may be disbursed to the developer

from the escrow or trust account by the agent only:

(A) after the purchaser's cancellation period has expired; and

(B) as provided by the purchase contract, subject to this subchapter; and

(2) if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to:

(A) the purchaser; or

(B) the developer if the purchaser's funds have been refunded previously by the developer.

(d) If a developer contracts to sell a timeshare interest and the construction of the building in which the timeshare interest is located has not been completed when the cancellation period expires, the developer shall continue to maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until construction of the building is completed. The documentation required for evidence of completion of construction includes:

(1) a certificate of occupancy;

(2) a certificate of substantial completion;

(3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a government agency in the applicable jurisdiction; or

(4) any other evidence acceptable to the commission.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.061 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 10, eff. January 15, 2006.*

Sec. 221.062. RELEASE OF ESCROW. (a) The funds or property constituting the escrow or trust deposit may be released from escrow only in accordance with this section.

(b) If the purchaser cancels the purchase contract as provided by the contract, the funds shall be paid to:

(1) the purchaser; or

(2) the developer if the purchaser's funds have been refunded previously by the developer.

(c) If the purchaser defaults in the performance of obligations under the terms of the purchase contract, the funds shall be paid to the developer.

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

(e) If the funds of the purchaser have not been disbursed previously as provided by Subsections (a)-(d), the funds may be disbursed to the developer by the escrow or trust agent if acceptable evidence of completion of construction is provided.

(f) If there is a dispute relating to the funds in the escrow or trust account, the agent shall maintain the funds in the account until:

(1) the agent receives written directions agreed to and signed by all parties; or

(2) a civil action relating to the disputed funds is filed.

(g) If a civil action is filed under Subsection (f) (2), the escrow or trust account agent shall deposit the funds with the court in which the action is filed.

(h) Excluding any encumbrance placed against the purchaser's timeshare interest that secures the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any funds escrowed with respect to each timeshare interest until the developer has provided the commission with satisfactory evidence that:

(1) the timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights;

(2) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the

timeshare, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the jurisdiction in which the timeshare interest is located that expressly and effectively provides that the interest holder's right, lien, or encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan, regardless of date of purchase, on and after the effective date of the date of the subordination document;

(3) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights therein to a nonprofit organization or an owners' association to be held for the use and benefit of the purchasers of the timeshare plan, which entity shall act as a fiduciary to the purchasers, provided that the developer has transferred control of that entity to the purchasers or does not exercise its voting rights in that entity with respect to the subject accommodations or amenities and, prior to the transfer, any lien or other encumbrance against the accommodation or facility is subject to a subordination and notice to creditors pursuant to this subsection; or

(4) alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and are approved by the commission.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.062 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

*Amended by:
Acts 2005, 79th Leg., Ch. 539, Sec. 10, eff. January 15, 2006.
SB 1036, 81st Leg. R.S., eff. Sept. 1, 2009.*

Sec. 221.063. ALTERNATIVE TO
E S C R O W O R T R U S T
A C C O U N T : F I N A N C I A L
ASSURANCE. (a) Instead of the deposit of funds in an escrow or trust account as provided

by Section 221.061, the commission may accept from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance, including financial assurance posted in another state or jurisdiction.

(b) The amount of the financial assurance provided under this section must be an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under Section 221.061(a).

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

(1) an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under that subsection; or

(2) the amount necessary to assure completion of the building in which the timeshare interest is located.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.063 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03 (b), eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 10, eff. January 15, 2006.

Sec. 221.064. DOCUMENTATION REQUIRED. The escrow or trust account agent or developer shall make documents related to the escrow or trust account or the financial assurance provided available to the commission at the commission's request.

Added by Acts 2005, 79th Leg., Ch. 539, Sec. 10, eff. January 15, 2006.

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 221.071. DECEPTIVE TRADE PRACTICES. (a) A developer or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive

Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Subchapter D;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented;

(7) failing to provide a copy of the purchase contract to the purchaser at the time the contract is signed by the purchaser;

(8) failing to provide the annual statement as required by Section 221.074(a); or

(9) exceeding a one-to-one purchaser-to-accommodation ratio for a timeshare plan during a consecutive 12-month period, as determined under Subsection (c).

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

(c) A developer complies with the one-to-one purchaser-to-accommodation ratio referred to in Subsection (a)(9) if the total number of purchasers eligible to use the accommodations of the timeshare plan during a consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that same period. A purchaser-to-accommodation ratio is computed by dividing the number of purchasers eligible to

use an accommodation in a timeshare plan on any given day by the number of accommodations within the plan available for use on that day. For purposes of computing the purchaser-to-accommodation ratio:

(1) each purchaser is counted at least once each consecutive 12-month period;

(2) each accommodation is counted not more than 365 times each consecutive 12-month period, excluding a leap year, in which each accommodation may be counted 366 times; and

(3) a purchaser who is delinquent in paying timeshare assessments is considered eligible to use timeshare plan accommodations.

(d) If a developer has substantially complied with this chapter in good faith, a nonmaterial error or omission is not actionable. Any nonmaterial error or omission is not sufficient to permit a purchaser to cancel a purchase contract after the period provided for cancellation expires under this chapter.

Added by Acts 1987, 70th Leg., ch. 167, Sec. 6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.071 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 443, Sec. 6, eff. Sept. 1, 1993. Amended by: Acts 2005, 79th Leg., Ch. 539, Sec. 11, eff. January 15, 2006.

Sec. 221.072. **INSURANCE.** Before the disposition of any timeshare interest, the developer or managing entity shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the full replacement cost of the accommodations and amenities of the timeshare property; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

Added by Acts 1987, 70th Leg., ch. 167, Sec.

6.03, eff. Sept. 1, 1987. Renumbered from Sec. 201.072 by Acts 1989, 71st Leg., ch. 2, Sec. 13.03(b), eff. Aug. 28, 1989.

Amended by: Acts 2005, 79th Leg., Ch. 539, Sec. 12, eff. January 15, 2006.

Sec. 221.073. **PENALTY.** (a) A developer subject to this chapter commits an offense if the developer offers or disposes of a timeshare interest in a timeshare property which has not been registered with the commission.

(b) It is not a violation of this section for a developer subject to this chapter to accept reservations and deposits from prospective purchasers in accordance with Section 221.021 (b) or (d).

(c) An offense under this section is a Class A misdemeanor. A person may not be prosecuted for more than one offense involving the same promotion, even if mailed or distributed to more than one person.

Added by Acts 1989, 71st Leg., ch. 381, Sec. 6, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 1382, Sec. 9, eff. June 19, 1999. Amended by: Acts 2005, 79th Leg., Ch. 539, Sec. 13, eff. January 15, 2006.

Sec. 221.074. **ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT.** (a) Notwithstanding any contrary provision of the required timeshare disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months after the last day of each fiscal year. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

(2) an income and expense statement;

(3) the current budget for the timeshare property, timeshare properties managed by the same managing entity, or multisite timeshare plan required by Section 221.032(b)(12); and

(4) the name, address, and telephone

number of a designated representative of the managing entity.

(b) On the request of an owner, the managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists.

(c) A developer or managing entity shall have an annual independent audit of the financial statements of the timeshare plan or timeshare properties managed by the managing entity performed by a certified public accountant or an accounting firm. The audit must be:

(1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards; and

(2) completed not later than five months after the last day of the fiscal year of the timeshare plan or timeshare property.

(d) Knowingly furnishing false information in the annual timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

(e) The managing entity of any accommodation located in this state shall post prominently in the registration area of the accommodations the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN FIVE MONTHS FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 7, eff. Jan. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 14, eff. January 15, 2006.

Sec. 221.075. CIVIL PENALTY FOR LATE STATEMENT; INJUNCTION. (a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(b) If the statement required by Section 221.074 is late and an extension has not been granted under Subsection (a), the managing entity required to provide the statement is liable to the state for a civil penalty not to exceed:

(1) \$500 per day for each of the first 10 days that the statement is late; and

(2) \$1,500 per day for each day after the 10th day, until the managing entity has complied with Section 221.074.

(c) In no event shall the civil penalties exceed \$30,000 for any one statement period.

(d) A managing entity may not assess against or collect from the purchasers of a timeshare property the amount of a penalty incurred under this section.

(e) If it appears that a managing entity has violated Section 221.074, the attorney general may institute an action for injunctive relief, a civil penalty, or both.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 7, eff. Jan. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1382, Sec. 10, eff. June 19, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 15, eff. January 15, 2006.

Sec. 221.076. MANAGING ENTITIES THAT MANAGE MORE THAN ONE TIMESHARE PROPERTY. (a) A managing entity that manages two or more single-site timeshare plans may commingle the assessments collected from purchasers of one timeshare plan with the assessments collected from purchasers of any other single-site plan for which it is the managing entity only if the practice is disclosed in the timeshare disclosure statement for each timeshare property and the appropriate statement is included in the declaration for each timeshare property as required by Subchapter B.

(b) A managing entity which manages a multisite timeshare plan may deposit assessments collected from purchasers of one timeshare property into a common account with assessments collected from purchasers of other timeshare properties participating in the same multisite timeshare plan only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan and the appropriate statement is included in the declaration for each timeshare plan as required by Subchapter B.

(c) Nothing in this section shall be construed to allow a managing entity to commingle assessments of a multisite timeshare plan with the assessments of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 16, eff. January 15, 2006.

Sec. 221.077. AVAILABILITY OF BOOKS AND RECORDS; RECORDS RETENTION. (a) A developer or managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of assessments.

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

Added by Acts 1993, 73rd Leg., ch. 443, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 539, Sec. 16, eff. January 15, 2006.